

# DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES



BRIAN SCHWEITZER  
GOVERNOR

JOAN MILES  
DIRECTOR

---

## STATE OF MONTANA

---

[www.dphhs.mt.gov](http://www.dphhs.mt.gov)

TO: Assisted Living Facility Administrators

FROM: Roy P. Kemp, Chief Licensure Bureau

RE: Assisted Living Facility Responsibilities if Safety Devices Are Used

This bulletin describes the responsibilities of the: 1) assisted living facility; 2) resident or family; 3) physician; and 4) Department of Public Health and Human Services (DPHHS) if safety devices are used in an assisted living facility. It offers an overview of administrative rules specific to the use of safety devices recently adopted by DPHHS (ARM 37.106.2901-37.106.2908). These rules also address assistive devices, postural supports and restraints. Facilities are responsible to comply with all aspects of these rules, not just the aspects highlighted in this bulletin. A copy of the rules has been included with this mailing. The rules are also available on the Department website at:

[http://www.dphhs.state.mt.us/legal\\_section/administrative\\_rules\\_montana/arm\\_title\\_37/chapter\\_29.pdf](http://www.dphhs.state.mt.us/legal_section/administrative_rules_montana/arm_title_37/chapter_29.pdf)

This bulletin focuses exclusively on safety devices. These devices have explicit requirements set out in state law and administrative rules that must be met prior to their use. The enclosed administrative rules also outline less stringent requirements that a facility must meet when either an assistive device or postural support is used. Restraints are currently prohibited in "category A" beds. The 2003 legislature passed a law prohibiting restraints in "category B or C" beds as of 10/1/03.

#### WHAT IS A SAFETY DEVICE?

A safety device is a side rail, tray table, seat belt, or other similar device. Safety devices are meant to maximize a resident's independence and maintain their health and safety by reducing the risk of falls and injuries. They are a form of treatment for a medical symptom. A medical symptom may include a concern for the resident's physical safety or a fear of falling. A safety device can never be imposed for purposes of coercion, retaliation, discipline, or staff convenience.

A side rail, tray table, seat belt, or other similar device may serve different purposes. Such a device may have the effect of restraining one individual but not another. This will depend on the individual resident's condition and circumstances. As an example, if use of a side rail is primarily because of a fear of falling or to remind a resident not to get out of bed without help, it is a safety device. If the side rail makes it physically possible for a resident to independently enter and exit the bed, it is an assistive device. A written explanation of alternatives and risks, a consent form and written doctor's order is needed for a safety device. An assistive device does not require this level of documentation. The assisted living facility must identify the purpose of the device and document in the resident's record why they consider the device to be either a safety device or an assistive device.

## **I. RESPONSIBILITIES OF A COMPETENT RESIDENT OR THE RESIDENT'S FAMILY**

### **Rights of a Competent Resident**

A competent resident is one who is able to decide what kind of care he/she wants or needs and participate in planning that care. The competent resident has a choice to use or not use a safety device. A family member may not agree with the resident's decision, but they cannot override the competent resident's request.

Some residents cannot make this treatment decision because they are not able to communicate or because their physician finds they are not able to understand the risks of using or not using a safety device. In these cases, a family member, a guardian, or a person who has been granted the power of attorney for health care decisions can make the request. (For ease of reading, the term "family" is used throughout the rest of this bulletin to describe a family member, a guardian or a person who has been granted the power of attorney for health care decisions.)

### **Understanding the Approval Process for a Safety Device**

The rule creates a process to follow before a safety device is used. The facility must provide written information about available alternatives and risks associated with using a safety device to the resident/family. The competent resident or the family signs an informed consent form acknowledging this information. This consent form also authorizes the facility to discuss the request for a safety device with the resident's physician<sup>1</sup>.

## **II. RESPONSIBILITIES OF THE ASSISTED LIVING FACILITY**

### **Provide Information to a Competent Resident or the Resident's Family**

The assisted living facility must inform a competent resident or the family in writing about available alternatives and the risks associated with the use of the safety device.

<sup>1</sup> The enabling legislation describes the physician as either a physician or an advanced practice registered nurse.

The safety device handout titled "One Daughter's Story" published by DPHHS is one resource that can be used to provide information for this purpose. A copy of this handout is enclosed. The text of the handout is available for printing on the Division's web site at:

<http://www.dphhs.mt.gov/programsservices/safetydevice/index.shtml>

A family member cannot override a resident's decision to either use or not use a safety device, unless:

1. A resident has been adjudicated and found incompetent;
2. A resident is unable to make decisions because of a communication barrier or has been found by their doctor to be medically incapable of granting informed consent;
3. The person requesting the safety device is the resident's guardian; or
4. The person has been granted the power of attorney for health care decisions.

In cases where the family is making the request for a safety device, the resident's record should contain specific documentation that one of the four conditions outlined above exists.

**Obtain Informed Consent**

The assisted living facility must obtain informed consent to use a safety device. The resident or family must sign and date the consent. The consent form should contain a statement that information regarding alternatives to and risks associated with safety device use was provided, that an opportunity to ask questions was offered, and the decision to use a safety device is freely given. A sample of an acceptable consent form is enclosed. It is also available on the Division website.

**Accept Only Individualized Orders**

The law requires a resident's physician to make statements and determinations regarding the medical symptom that the safety device is intended to address and the type of circumstances and duration under which the safety device is to be used. Therefore, assisted living facilities cannot obtain standing orders from physicians for safety device use. An individualized doctor's order is required whenever a safety device is used.

**Quarterly Evaluation of Continued Safety Device Use**

The facility must review the decision to use a safety device at least quarterly or more often if the resident's condition changes. This evaluation should include any behaviors or incidents that have arisen as the result of using the safety device that could endanger the resident or others. The facility must work with a resident or the family and the doctor to find the least restrictive safety device, while meeting the desire for physical safety.

**Use of Bed Rails**

Bed rails that extend the entire length of the bed may not be used under any circumstances. Full side rails are a restraint, not a safety or assistive device. A bed rail that extends from the head to half the length of the bed is allowed.

**Opportunity for Exercise and Toileting**

Residents must be given the opportunity to exercise and use the bathroom at least every two hours (or more often upon request) during waking hours.

**Application and Monitoring of Safety Devices**

Safety devices can only be applied in accordance with manufacturer's instructions. Staff must be able to rapidly remove the device in case of fire or other emergency. A facility that uses safety devices must have a written policy that addresses frequency of monitoring; assessment and provision of treatment if necessary for skin care, circulation, and range of motion; and any unusual occurrences or problems associated with the use of the safety device. Documentation that the facility's policy is adhered to must be present in the resident's record.

**Staff Training**

Safety devices can only be applied by staff trained in their proper use. Training must address the specific physical and behavioral areas identified in the rule (ARM 37.106.2908). A social worker, physician, physician assistant-certified, advanced practice registered nurse, registered or practical nurse can train staff. Annual refresher training is required for all direct care staff.

**III. RESPONSIBILITIES OF A RESIDENT'S PHYSICIAN**

**Provide Written Order**

The law requires that a resident's physician provide a written and signed order for a safety device that specifies: ☒ The medical symptom(s) it is intended to address. A medical symptom can

include fear of falling or concern for physical safety; ☒ When and why it can be used; and ☒ How long it can be used.

A physician is not obligated to order a safety device because the resident or family has requested it. The physician must use his/her best medical judgment to decide whether the benefits of using the safety device outweigh the risks associated with it for the particular resident. If the physician does not order a safety device for the resident, a safety device may not be used.

#### IV. RESPONSIBILITIES OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

##### **Accept the Physician Order**

The Department will accept a written order from the resident's physician as sufficient evidence of medical necessity for a safety device. The order must specify the medical symptom the device is being prescribed as treatment for. Again, a medical symptom can include fear of falling or concern for physical safety. The order must also specify how long, when and why the device is to be used.

##### **Licensure Surveys**

The Department will perform on-site assessments (licensure surveys) to ensure that the health and safety of residents is not jeopardized and that facilities are complying with these new rules.

##### **Forms Available for Assisted Living Facility Use**

The Department has developed a handout for residents and/or families entitled "One Daughter's Story" and an informed consent form. Facilities are free to copy and personalize these forms. They are available on the Division website for precisely that purpose. Use of the Department forms is not mandatory. A facility may develop its own handouts and informed consent form as long as all of the requirements specified in the administrative rules are addressed.

If you have questions regarding the administrative rules or this bulletin, please contact:

Ruth Burleigh, Health Facility Supervisor  
Licensure Bureau  
DPHHS/QAD  
P.O. Box 202953  
Helena, MT 59620-2953  
406-444-1575

E-mail: [rburleigh@mt.gov](mailto:rburleigh@mt.gov)